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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

ORIGINAL COPY

No. 79-6853

LEAH LYNN PARRISH WEBB, Petitioner

v.

JAMES THOMAS WEBB, Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONER'S REQUEST FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The Respondent would add the following to the Petitioner's Statement of the Case.

The Georgia trial court found that the child in this case had been abandoned and that it was necessary and it was an emergency to protect the child because the child had been subjected to and threatened with mistreatment and abuse and was otherwise neglected by his mother and that it was in the best interest of the child that he be and remain with his father and that the final decree entered in this matter be modified and the custody be awarded to the Respondent in this case.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

_____

NO._____

_____

The Respondent, JAMES THOMAS WEBB, respectfully prays that a writ of certiorari not be issued to review the judgment and opinion of the Georgia Supreme Court entered on April 8, 1980, and its denial of rehearing entered April 22, 1980.

REASONS FOR NOT GRANTING THE WRIT

1. THE DECISION BELOW IS IN LINE WITH ESTABLISHED PRINCIPLES THAT THE PARAMOUNT INTEREST IN CHILD CUSTODY CASES IS THE BEST INTEREST OF THE CHILD WHICH MAY REQUIRE THE MODIFICATION OF A PRIOR CUSTODY DECREE.

As acknowledged by petitioner, the Supreme Court has never stated that full faith and credit is an absolute requirement in child custody cases. In fact, a survey of the cases indicate that the crucial focus is the "best interest" of the child and modification is acceptable if necessary to effectuate this end. See Halvey v. Halvey, 330 U. S. 610 (1947).

Subsequent cases further clarified the Supreme Court's adherence to this principle in announcing that when the issue was the custody of a child, the "best interest" test provided that a decree could be modified as needed to meet a change in circumstances. See Kovacs v. Brewer, 356 U. S. 604 (1957); Ford v. Ford, 371 U. S. 187 (1962). In addition these cases establish that it is proper for the second state to inquire into the procedural fairness afforded the parties in the initial proceeding so as to insure the basic requirements of due process

are met. See Ford v. Ford, 371 U. S. 182 (1962).

A survey of Georgia cases reveals that Georgia courts have followed closely the tenor of the rationale announced by the Supreme Court. It is clear that under Georgia case law that a custody decree of another state may be modified when there has been a change in circumstances sufficient to authorize the modification of a similar judgment rendered by the courts of Georgia. Belden v. Strickland, 218 Ga. 105 (1962). Likewise the Georgia Supreme Court authorizes an inquiry by the courts to insure that the essential requirements of due process were met when the initial decree was rendered. Whitaker v. Whitaker, 237 Ga. 895, 230 S. E. 2d 486 (1976).

It is clear that this case violates none of the principles previously alluded to. This case turns solely upon a factual determination by the Georgia trial court that the child involved had been abandoned, or in any event, neglected to the extent that the father was justified in removing the child from Florida. As noted by the Georgia Supreme Court, the evidence authorized a finding that the father retrieved the child in the face of an emergency situation created by the mother. These circumstances were deemed sufficient to afford Georgia jurisdiction under Ga. Code Ann. §74-504 (a) (3). Therefore it is clear that the focus of this case is not whether full faith and credit should have been afforded the Florida custody decree. The crux of this case turns solely upon an analysis of the particular facts involved. The sole issue is whether under the facts before it, the Georgia trial court acted in the best interest of the child. As noted by this court in United States v. Johnston, 268 U. S. 200, 227, "We do not grant a certiorari to review evidence and discuss specific facts".

Under the circumstances of this case the trial court

acted properly in denying the Florida judgment full faith and credit since the mother was guilty of neglect and abuse.

Respondent admits that there was lacking the cooperation between states sought under the Uniform Child Custody Jurisdiction Act. In fact as noted by the Supreme Court both Georgia and Florida failed to comply with the provisions addressing simultaneous proceedings in other states. However it should be noted that under the provisions of the Uniform Child Custody Act, if the child was lawfully in Georgia, Florida acted improperly in assuming jurisdiction over the action, (§61.133 Ga. Code Ann. §74-115 (Supp 1980) and could not modify the Georgia decree. It also appears that the trial court was unaware of the Florida action until it had concluded. In fact the Georgia trial court was informed of the Florida action at the hearing on the petitioner's motion to dismiss for lack of jurisdiction. At this time, petitioner presented the final order of the Florida court which had been entered approximately three weeks earlier. The Georgia Supreme Court reasoned that under these circumstances there was no need for additional inquiry under Ga. Code Ann. §74-507 since it was apparent that the Florida action had concluded. To dismiss the case at this point would have been contrary to the principles of judicial economy and orderly administration of justice underlying Ga. Code Ann. §74-507. It being clear that all parties were properly before the Georgia court, the trial judge acted properly in conducting the trial.

Finally, as noted by the Georgia Supreme Court a trial judge has broard discretion in determining whether there has been a material change in circumstances reflecting the welfare of the child so that custody should be changed. Wrede v. Beuke, 221 Ga. 778, 147 S. E. 2d 324 (1966), Mallette v. Mallette, 220 Ga. 401, 139 S. E. 2d 322 (1964). In the instant case there

was evidence to support the trial court's finding that the mother had acted improperly in leaving the child alone for the weekend without adult supervision. In addition, the Georgia decree placing custody in the father was entered long enough after the Florida court had improperly ruled in the case to justify the Georgia court finding a material change in the circumstances surrounding the custody of the child.

2. RESPONDENT'S CONDUCT WAS NOT CONTRARY TO THE PURPOSES SET FORTH IN THE UNIFORM CHILD CUSTODY JURISDICTION ACT.

Respondent agrees that one of the primary purposes of the Uniform Child Custody Jurisdiction Act is to deter the abduction of children. However that purpose is not the issue in this case. The facts support a finding that the Georgia Trial Court had jurisdiction under Ga. Code Ann. §74-504 a (1), (2) and (3). The instant case did not involve the unlawful taking of a child into another state for the purpose of obtaining a more favorable forum. Instead, the respondent returned to Georgia with his son after having been called by Florida authorities concerning his welfare. It should be further noted that rather than returning to a more favorable forum the respondent was obliged to return to the same court which had previously awarded custody of the child to the mother. It was this very Court which found the material change in circumstances sufficient to warrant a modification of the prior custody decree, issued by this court in 1977 approximately two years before.

It is clear that the Respondent's conduct in no way fits the statutory requirements of Ga. Code Ann. §74-509 which sets forth the grounds which a court can deny jurisdiction for reprehensible conduct. Section 74-509 (b) provides: "Unless required in the interest of the child, the court should not

exercise tis jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody, has improperly retained the child after a visit or other temporary relinquishment of physical custody..." [Emphasis added]. This statute codifies the rule that the principal focus remains the interest of the child. It also illustrates that under the facts of this case the respondent has not acted contrary to the purposes set forth in Ga. Code Ann. §74-501 et seq.

CONCLUSION

It being clear that the critical factor in this case was a factual determination by the court as to what was in the best interest of the child and since this court does not review evidence and specific facts, certiorari should be denied.

Respectfully submitted,

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